

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

FILED - CLERK  
U.S. DISTRICT COURT  
05 MAY 31 PM 3:56  
TX EASTERN - BEAUMONT

BY \_\_\_\_\_

RICHARD JAMES JOHNSON, #1005689 §

VS. §

CIVIL ACTION NO. 9:05cv83

DIRECTOR, TDCJ-CID §

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge Harry W. McKee. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition of this case. Petitioner filed a "Motion for Plain Error," which this Court construed as objections to the Report.

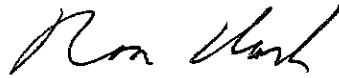
This Court made a *de novo* review of Petitioner's objections and determined that they lack merit. Petitioner's objections assert that he is entitled to habeas corpus relief under *United States v. Booker*, 125 S. Ct. 738 (2005). *Booker*, however, does not apply retroactively on collateral review for purposes of a successive motion. See *In re Elwood*, —F.3d—, 2005 WL 976998 at 2-3 (5th Cir. 2005).

This Court finds that the Magistrate Judge's findings and conclusions are correct, and adopts them as the Court's findings and conclusions. The Court therefore

**ORDERS, ADJUDGES, and DECREES that this action is DISMISSED WITH PREJUDICE; and**

**ORDERS** that all motions not previously ruled on are denied.

SIGNED this 27<sup>th</sup> day of Nov, 2005.



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RON CLARK  
UNITED STATES DISTRICT JUDGE